MAR 21 1956
HAROLD B. WILLEY, Clerk

# Supreme Court of the United States

OCTOBER TERM 1955

No. 779

SIGMUND REISS,

*Appellant,*

vs.

THE PEOPLE OF THE STATE OF NEW YORK.

**On Appeal from the County Court of the County of Nassau, State of New York**

## JURISDICTIONAL STATEMENT

OSMOND K. FRAENKEL,
120 Broadway,
New York 5, N. Y.,

MERCEDES HOFFMANN,
165 Broadway,
New York 6, N. Y.,

*Attorneys for Appellant.*

# Supreme Court of the United States

**OCTOBER TERM 1955**

| | |
|---|---|
| SIGMUND REISS, Appellant, vs. THE PEOPLE OF THE STATE OF NEW YORK. | No. ..... |

## JURISDICTIONAL STATEMENT

**On Appeal from the County Court of the County of Nassau, State of New York**

### (a) Opinion

There were no opinions delivered in the courts below.

### (b) Jurisdiction

(i) This is an appeal pursuant to 28 U. S. C. 1257 (2) from a final order made and entered in the County Court of Nassau County, State of New York, affirming the judgment of conviction of appellant in the First District Court of Nassau County of contempt of court in violation of Section 600, subdivision 4-a of the Penal Law of the State of New York. The grounds for appeal to said County Court were the invalidity of said section 600, subdivision 4-a on its face and as applied to appellant as an abridgment of freedom of speech and press in violation of the United States Constitution. Application having been made pursuant to the laws of the State of New York on the same grounds to a judge of the Court of Appeals for leave to appeal to said Court of Appeals from the determination

by the County Court, and that application having been denied, the affirmance by the County Court was the highest court in the State in which a decision could be had, and the decision of that court was in favor of the validity of Section 600, subdivision 4-a of the Penal Law.

(ii) Review is sought of the final order dated August 10, 1955 and entered August 11, 1955 as amended by the order made and entered December 21, 1955. Application for leave to appeal to the Court of Appeals was duly made pursuant to the laws of the State of New York to a judge of the Court of Appeals, the Hon. Albert C. Conway, Chief Judge, on August 29, 1955, and was denied on November 28, 1955. Notice of Appeal to the Supreme Court of the United States was filed on February 7, 1956, in the County Court of Nassau County.

(iii) It is believed that section 1257, subdivision 2 of Title 28 of the Federal Code confers jurisdiction of the appeal on this court:

> "1257. State courts—Appeal—Certiorari—Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * * *
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

(iv) *Cases believed to sustain the jurisdiction*:

*Michigan-Wisconsin Pipe Line Co.* v. *Calvert et al.*, 347 U. S. 157;

*American Railway Express Co.* v. *Levee*, 263 U. S. 19;

*Jamison* v. *Texas*, 318 U. S. 413;

*Largent* v. *Texas*, 318 U. S. 418;

*Kunz* v. *New York*, 340 U. S. 290.

(v) *The State Statute involved*:

"Sec. 600—Criminal contempt.

A person who commits a contempt of court, of any one of the following kinds, is guilty of a misdemeanor * * *:

4-a. Doing any of the following acts on or along a public street or sidewalk within a radius of two hundred feet of any building established as a court-house, viz: calling aloud, or shouting, or holding or displaying placards or signs containing written or printed matter, concerning the conduct of any trial being conducted in such court-house or the character of the court or jury engaged thereupon or calling for or demanding any specific action or determination upon the part of such court or jury in connection with said trial."

(McKinney's Cons. Laws, Book 39 Supp. p. 92 as amended by Laws 1952, c. 669.)

**(c) Questions presented by this appeal:**

Whether the New York State legislature, without violating the provisions of the First and Fourteenth Amendments to the United States Constitution with respect to freedom of speech, press and due process, may by way of Section 600, subd. 4-a, of the Penal Law, on its face and as construed and applied to appellant:

1. Create a criminal offense entitled "contempt of court" which makes the orderly expression of opinion concerning courts and judges, on public streets near court buildings, punishable as a misdemeanor without any further showing:

2. Grant special immunity against comment and criticism to courts and judges:

3. Impair the right to the opportunity to persuade others to a point of view concerning courts, judges and the desirability of investigating the judiciary by prohibiting the use of public streets in the vicinity of court buildings for such purposes;

4. Disregard the tests of clear and present danger to the administration of justice which the Supreme Court has declared must be established to support a finding of contempt of court by a judge:

5. Interfere with the exercise of constitutional rights on public streets for reasons and by measures which are unrelated to the free flow of traffic.

**(d) Facts**

Appellant during a period from October 18, 1954 to October 21, 1954, walked back and forth on a public sidewalk within 200 feet of buildings housing various courts in Nassau County while those courts were in session, wearing a sign on which there appeared the following:

> "Special attention Litigants—Avoid being 'the next victim.' Don't try your case before a court that arranges fake trials and sells decisions. Nassau Citizens Committee" and "Let us find out how it is accomplished and work to make our courts 'inviolable.' Nassau Citizens Committee" (Record, p. 2).

Appellant was arrested and charged in the First District Court of Nassau County with a criminal contempt of court in violation of Sec. 600, subd. 4-a of the Penal Law of the State of New York (id., p. 1), held in bail pending trial, subsequently released upon his promise to refrain from picketing and finally tried and found guilty, receiving a three-month suspended sentence (id., p. 5).

Appellant was not represented by counsel in the District Court (id., p. 3).

Appellant duly appealed as provided by the laws of the State of New York to the County Court of Nassau County (id., p. 6) and raised the federal questions sought to be reviewed by setting forth in the notice of appeal the invalidity of section 600, subd. 4-a of the Penal Law on its

face and in its application to appellant as an abridgment of freedom of speech and press in violation of the Constitution of the United States (id., pp. 6, 7).

Upon the argument of the appeal both sides confined themselves to argument, and the court expressly considered the appeal, in the light of the provisions of the first and fourteenth amendments to the Federal Constitution with respect to speech, press and due process (id., pp. 11-14). The County Court affirmed the conviction of the court below, thereby sustaining the validity of the aforesaid Section 600, subd. 4-a of the Penal Law of the State of New York (id., pp. 10, 12).

**(e) The federal questions are substantial**

This court has in a great variety of cases over a long period of time enumerated the following principles: That under the constitution, the exercise of free speech and press cannot in and of itself be made a crime.

*Thomas* v. *Collins*, 323 U. S. 516.

The right to speech and press includes the right to the opportunity to persuade to action.

*Thomas* v. *Collins, supra;*
*Jamison* v. *Texas, supra;*
*Largent* v. *Texas, supra.*

Public streets are the natural and proper places to exercise constitutional rights; interference by the state or its subdivisions with the exercise of constitutional rights on public streets is proper only when confined to such measures as are required to assure the free flow of traffic.

*Schneider* v. *State*, 308 U. S. 147;
*Hague* v. *C.I.O.*, 307 U. S. 496.

Suppression of opinion or punishment for the expression thereof is neither justified nor permissible because such opinion is unfair or unjust or annoying or distasteful or otherwise irritating or offensive or disturbing to any group, class or members of the community.

*Murdock* v. *Pennsylvania*, 319 U. S. 105;
*Cantwell* v. *Connecticut*, 310 U. S. 296;
*Largent* v. *Texas, supra;*
*Jamison* v. *Texas, supra;*
*Hague* v. *C.I.O., supra;*
*Saia* v. *New York*, 334 U. S. 558;
*Board of Education* v. *Barnette*, 319 U. S. 624;
*Terminiello* v. *Chicago*, 337 U. S. 1;
*Burstyn* v. *Wilson*, 343 U. S. 495;
*Near* v. *Minnesota*, 283 U. S. 697;
*Kunz* v. *New York, supra.*

The right to free speech and press includes the right to criticize courts and judges; interference with the exercise of the right is justified only upon a positive showing that the exercise of the right constitutes a clear and present danger to the administration of justice both grave and immediate.

*Bridges* v. *California*, 314 U. S. 252;
*Pennekamp* v. *Florida*, 328 U. S. 331;
*Craig* v. *Harney*, 331 U. S. 307.

Appellant contends that section 600, subd. 4-a of the Penal Law of the State of New York as it has been construed and applied to him seriously violates all of these principles and is repugnant to the Constitution.

It should be noted that appellant's sign condemned the administration of justice and urged investigation of the judiciary, in strong but general language. No particular judge or judges, case or cases were named. No specified action or determination was called for or demanded in any

particular case or cases. Moreover, no disorder, obstruction of traffic in or out of the buildings or otherwise, or interference with the administration of justice was charged. Nevertheless, the statute has been construed to apply to appellant and he has been subjected to arrest, imprisonment and criminal conviction for urging an investigation of the judiciary for bribery.

The issue is not whether appellant's charges against the judiciary of Nassau County were justified or even whether there was any basis for them. Unhappily, however, it has not been an unheard of thing for judges to accept bribes and it is submitted that a statute which makes it a crime to seek effectively to enlist support for a judicial investigation constitutes a grave threat to our traditional liberties. For, as this court has noted:

> "Charges of reprehensible conduct and in particular official malfeasance unquestionably create a public scandal, but the theory of the constitutional guaranty is that even a more serious public evil would be caused by authority to prevent publication."
>
> (*Near* v. *Minnesota, supra*, pp. 722, 723.)

It has been argued that the statute did not prevent appellant from making his charges and seeking support for his point of view—he was merely barred from the area proscribed by the statute "a public street or sidewalk within a radius of two hundred feet of any building established as a courthouse." It is interesting to note that the statute does not bar all expression of opinion in the prohibited area. Presumably one may comment vigorously and without restraint on all matters, except the administration of justice, on public streets within the 200-foot radius of a courthouse. The statute is clearly therefore not designed as a traffic measure. May the legislature validly limit the subject matter to be "discussed" on public streets by making it in and of itself a crime to make any reference to courts and

judges in the areas where courts and judges are found! This court has expressed its disapproval of attempts to limit and control a street speaker's subject matter.

*Kunz* v. *New York, supra.*

Moreover it is obvious that the usual arrangement of court buildings in New York State as well as other states is such that the 200-foot radius shuts off the entire vicinity in which such buildings are located. The "opportunity to persuade to action" which this court has held is included in the right to speech and press (*Thomas* v. *Collins, supra,* p. 537) is thus effectively impaired for one who seeks to persuade others to support a judicial investigation.

Public streets are appropriate places for the dissemination of opinion and one who is rightfully on a public street carries with him there as elsewhere the constitutional right to express his views in an orderly fashion.

*Schneider* v. *State, supra;*
*Hague* v. *C.I.O., supra.*

> "One is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place."
>
> *Schneider* v. *State, supra,* p. 163.

The Court's observation is particularly noteworthy where "some other place" is in an area that either has no relationship to the subject matter involved or has little if any pedestrian traffic.

The statute involved in the case at bar is unusual. It is new for the State of New York, the within appeal being, as far as the writer can determine, the first case to arise thereunder.

It is submitted that the legislature has no right to grant the judiciary immunity from comment and criticism. If such immunity may be granted the judiciary, it might also

be granted to other officials and so restrict that freedom of criticism so essential to the proper functioning of our democratic institutions.

The case at bar, therefore, presents new, extraordinary and substantial constitutional questions which should be ruled upon by this Court.

Respectfully submitted,

Osmond K. Fraenkel,
120 Broadway,
New York 5, N. Y.,

Mercedes Hoffmann,
165 Broadway,
New York 6, N. Y.,

Attorneys for Appellant.

## APPENDIX

### Amended Order of County Court Appealed From.

At a Term of the County Court held in and for the County of Nassau at the County Court House, Old Country Road, Mineola, New York, on the 21st day of December, 1955.

Present: Hon. Cyril J. Brown, *County Judge.*

| | |
|---|---|
| The People of the State of New York, Respondent, against Sigmund Reiss, Defendant-Appellant. | |

Upon the annexed affidavit of Mercedes Hoffmann, sworn to the 14th day of December, 1955, and upon all of the proceedings heretofore had herein, it is hereby

Ordered that the order made on August 10, 1955 and entered August 11, 1955 affirming the judgment of conviction be amended to read as follows:

The above-named defendant-appellant, Sigmund Reiss, having been convicted on the 28th day of December, 1954 of Contempt of Court (Section 600, subdivision 4a of the Penal Law of the State of New York) by and before the Hon. Samuel Greason, District Court Judge of the County of Nassau, First District, Mineola, New York, without a jury, and upon such conviction having been sentenced to be imprisoned in the Nassau County Jail for three (3) months, execution of such sentence having been suspended, and the said defendant having thereafter appealed from

such judgment of conviction to the County Court of Nassau County, and the said appeal having come on for argument in the said County Court of Nassau County on the 27th day of July, 1955;

Now, upon reading and filing the return of the District Judge, First District, County of Nassau, as aforesaid, and the memoranda submitted on behalf of the defendant-appellant and the People respectively, and after hearing Mercedes Hoffmann, Attorney for Defendant-Appellant, in support of said appeal, and Frank A. Gulotta, District Attorney of Nassau County (Henry P. DeVine Assistant District Attorney) in opposition thereto, and both sides having argued, and the court having considered the within appeal in the light of the provisions of the first and the fourteenth Amendments to the Federal Constitution with respect to speech, press and due process, and due deliberation having been had thereon, and the Court having made and filed its decision herein in writing dated the 4th day of August, 1955;

Now, on motion of Frank A. Gulotta, District Attorney of Nassau County, it is hereby

Ordered that the aforesaid judgment of conviction be and the same hereby is in all respects affirmed.

Enter,

Cyril J. Brown,
*County Judge, Nassau County.*

No. 779. REISS *v.* NEW YORK. Appeal from the County Court of Nassau County, New York. *Per Curiam:* The appeal is dismissed. MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS would note probable jurisdiction. *Osmond K. Fraenkel* for appellant.